

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DANIEL RHINE, an individual,

Plaintiff,

v.

PETE BUTTIGIEG, United States Secretary
of Transportation,

Defendant.

CASE NO. 2:20-cv-01761-RAJ

DEFENDANT'S ANSWER TO
PLAINTIFF'S COMPLAINT AND
AFFIRMATIVE DEFENSES

COMES NOW defendant Pete Buttigieg¹, United States Secretary of Transportation ("Defendant"), by and through his attorneys, Brian T. Moran, United States Attorney for the Western District of Washington, and Sarah K. Morehead, and Heather C. Costanzo, Assistant United States Attorneys for said District, and states as follows in answer to Plaintiff Rhine's Complaint in paragraphs that correspond to the numbering in the Complaint:

I. INTRODUCTION

1.1 Defendant admits that the plaintiff in this case is Daniel Rhine, that he purports to bring

¹ On February 2, 2021, Pete Buttigieg became the Secretary of the United States Department of Transportation. Defendant thus substitutes Secretary Buttigieg in place of former Secretary Chao, pursuant to Fed. R. Civ. P. 25(d).

1 claims against the Secretary of the U.S. Department of Transportation in his official capacity for
2 retaliation and discrimination, and that his Prayer for Relief requests damages and attorney's fees.
3 Except as so admitted, defendant denies the allegations of the paragraph.
4

5 **II. PARTIES**

6 2.1 Defendant lacks information sufficient to admit or deny the first sentence of the paragraph and
7 therefore denies the same. Answering the second sentence, defendant admits that at all times relevant
8 to the Complaint, plaintiff was an employee of the FAA and denies the remaining allegations of the
9 sentence.
10

11 2.2 The allegation regarding jurisdiction states a legal conclusion to which no answer is required.
12 To the extent an answer is required, defendant denies and puts plaintiff to his proof. Defendant denies
13 the remaining allegations of the paragraph.
14

15 **III. JURISDICTION & VENUE**

16 3.1 The allegation regarding venue states a legal conclusion to which no answer is required. To
17 the extent an answer is required, defendant denies and puts plaintiff to his proof.

18 3.2 Defendant denies the allegation as written. Defendant admits that the MSPB issued its Initial
19 Decision on September 29, 2020 that stated in part: "This initial decision will become final on
20 **November 3, 2020**, unless a petition for review is filed by that date."
21

22 **IV. FACTS**

23 4.1 Defendant admits that on July 6, 2010, plaintiff started his employment with the FAA as a
24 full-time employee. Except as so admitted, defendant denies the allegations of the paragraph.
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28

1 4.2 Defendant admits the allegations of the paragraph.

2 4.3 Defendant admits that while plaintiff was employed by the FAA, plaintiff pursued a master's
3 degree in Public Administration (MPA) through the University of Nebraska, Omaha. Defendant also
4 admits that in 2018, plaintiff was accepted into the agency's degree completion program. Defendant
5 lacks information sufficient to form a belief as to the truth or falsity of the remaining allegations of
6 the paragraph and therefore denies the same.
7

8 4.4 Defendant admits that Thomas Poole was plaintiff's supervisor for a period of time. Except
9 as so admitted, defendant denies the allegations of this paragraph.
10

11 4.5 Defendant admits that plaintiff and Ms. Perez were in what could be described as a
12 relationship at some points in 2013 and 2014. Except as so admitted, defendant denies the remaining
13 allegations of the paragraph.
14

15 4.6 Defendant denies the allegations of this paragraph.

16 4.7 Defendant denies the allegations of this paragraph.

17 4.8 Defendant admits that plaintiff made an informal complaint to the EEOC in 2015 against Ms.
18 Storlie (whose last name later changed to Perez) claiming a hostile work environment. Except as so
19 admitted, defendant denies the allegations of the paragraph.
20

21 4.9 Defendant denies the allegations of the paragraph.

22 4.10 Defendant denies the allegations of the paragraph.

23 4.11 Defendant admits that in January 2016, plaintiff and the FAA reached a settlement agreement
24 on the matters involved in plaintiff's EEO complaint. Except as so admitted, defendant denies the
25 allegations of the paragraph.
26
27
28

1 4.12 Defendant responds that the allegation regarding “investigation results” is too vague to
2 permit a response so defendant denies the same. Defendant denies the remaining allegations of the
3 paragraph.
4

5 4.13 Defendant admits that plaintiff claimed in 2016 that the settlement agreement was
6 breached and followed the appeal process without success. Except as so admitted, defendant denies
7 the allegations of the paragraph.
8

9 4.14 Defendant denies the allegations of this paragraph.
10

11 4.15 Defendant admits that procedures implemented to ensure Plaintiff only accessed FAA
12 work areas necessary to fulfill the requirements of his job, while limiting contact with certain
13 individuals in the Acquisitions line of business, were relaxed around July 2017. Except as so
14 admitted, defendant denies the allegations of the paragraph.
15

16 4.16 Answering the first sentence of the paragraph, defendant lacks information sufficient to
17 admit or deny the allegations and therefore denies the same. Defendant denies the second sentence
18 of the paragraph.
19

20 4.17 Defendant lacks information sufficient to admit or deny the allegations of this paragraph and
21 therefore denies the same.
22

23 4.18 Defendant denies the allegations of this paragraph.
24

25 4.19 Defendant responds that the allegations in this paragraph are too vague to permit a response,
26 and therefore defendant denies the same.
27

28 4.20 Defendant denies the allegations of this paragraph.
29

4.21 Defendant denies the allegations of this paragraph.
30

4.22 Defendant admits that on February 20, 2019, plaintiff sent an email that included Mr. Van
Allman, Mr. Poole, and Scott Matson in which he wrote that he was “fatigued of your team’s 4 year

1 history of false claims that stem from continued sexual harassment.” Except as so admitted,
2 defendant denies the allegations of the paragraph.

3 4.23 Defendant admits that on February 20, 2019, Mr. Van Allman wrote an email to plaintiff
4 regarding his February 20, 2019 email. The content of the email speaks for itself and defendant
5 denies any allegation inconsistent with the content of the email. Except as so admitted, defendant
6 denies the allegations of the paragraph.

7 4.24 Defendant denies the allegations of the paragraph.

8 4.25 Defendant denies the allegations of the paragraph.

9 4.26 Defendant admits that on or around February 22, 2019 and at the suggestion of Kirsten
10 Kenny, Mr. Van Allman, Ms. Dillon, and others met to determine whether plaintiff’s behaviors
11 constituted a threat to other agency employees or property. Except as so admitted, defendant denies
12 any remaining allegations in the paragraph.

13 4.27 Defendant denies the allegations of the paragraph.

14 4.28 Defendant denies the allegations of the paragraph.

15 4.29 Defendant admits that on March 2, 2019, Ms. Perez saw plaintiff in the 5th floor pantry
16 outside the legal office going through the refrigerator. Defendant admits that Ms. Perez and plaintiff
17 did not interact with each other at that time. Defendant lacks knowledge sufficient to admit or deny
18 the allegation regarding whether plaintiff was aware that Ms. Perez was in the area at the time and
19 therefore denies the same. Defendant admits that Ms. Perez told Ms. Kenny that she felt threatened
20 by plaintiff’s presence. Except as so admitted, defendant denies the allegations of the paragraph.

21 4.30 Defendant admits that Ms. Perez did not claim in her interview to have observed lack of
22 candor, inaccurate time and attendance, or misuse of government property or time on March 2, 2019.
23 Except as so admitted, defendant denies the allegations of the paragraph.
24
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1 4.31 Defendant admits that on March 4, 2019, Ms. Kenny investigated what Ms. Perez had
2 reported by reviewing video. Defendant admits that Ms. Kenny was generally aware plaintiff and
3 Ms. Perez had had a previous relationship years before. Except as so admitted, defendant denies the
4 allegations of the paragraph.
5

6 4.32 Defendant denies the allegations of the paragraph.

7 4.33 Defendant denies the allegations of the paragraph.

8 4.34 Defendant admits that Ms. Kenny assigned Ms. Lund as the Primary Investigator on the
9 case and that Ms. Dillon was notified of the investigation. Except as so admitted, defendant denies
10 the allegations of the paragraph.
11

12 4.35 Defendant admits the allegations of the paragraph.

13 4.36 Defendant denies the allegations of the paragraph.

14 4.37 Defendant admits that plaintiff filed an Allegation Report Form with the FAA
15 Accountability Board on or around March 6, 2019. Defendant admits that what plaintiff wrote on
16 the form speaks for itself and denies any allegation inconsistent with what he wrote. Except as so
17 admitted, defendant denies the allegations of the paragraph.
18

19 4.38 Defendant admits the allegations of the paragraph.

20 4.39 Defendant admits that on March 11, 2019, Ms. Perez was interviewed for the ASH
21 investigation into plaintiff's behaviors and made her statement as to why she was concerned to have
22 found plaintiff in the break room outside of her office on Saturday, March 2, 2019. Except as so
23 admitted, defendant denies the allegations of the paragraph.
24

25 4.40 Defendant admits that Ms. Perez did not claim in her interview to have observed lack of
26 candor, inaccurate time and attendance, or misuse of government property or time on March 2, 2019.
27 Except as so admitted, defendant denies the allegations of the paragraph.
28

1 4.41 Answering the first sentence of the paragraph, defendant lacks information sufficient to
 2 form a belief as to the truth or falsity of the allegations therein and therefore denies the same.
 3 Defendant admits that Ms. Lund and Ms. Kenny questioned plaintiff on May 2, 2019. Except as so
 4 admitted, defendant denies the allegations of the paragraph.
 5

6 4.42 Defendant admits that plaintiff volunteered the names of file locations on his work computer
 7 where he had saved and stored personal materials and admits that he showed the ASH investigators
 8 his personal cellphone. Except as so admitted, defendant denies the allegations of the paragraph.
 9

10 4.43 Defendant admits that plaintiff exhibited some tears while he was being interviewed and
 11 admits that plaintiff admitted his wrongdoing. Except as so admitted, defendant denies the
 12 allegations of the paragraph.

13 4.44 Defendant denies the allegations of the first sentence of the paragraph. Defendant admits
 14 the allegations of the second sentence of the paragraph.
 15

16 4.45 Defendant admits that Ms. Dillon requested a meeting with Mr. Van Allman and Ms.
 17 Holguin but denies the remaining allegations of the paragraph.

18 4.46 Defendant denies the allegations of the paragraph.

19 4.47 Defendant denies the allegations of the paragraph.

20 4.48 Defendant denies the allegations of the paragraph.

21 4.49 On July 19, 2019, Ms. Lund issued a supplemental Report of Investigation
 22 (ROI). A second supplemental ROI was issued on September 26, 2019. Except as so admitted,
 23 defendant denies the allegations of the paragraph.
 24

25 4.50 Defendant admits that around August 6, 2019, plaintiff sent an email to Mr. Allman that
 26 referenced a "Person A" and "Person B." Except as so admitted, defendant denies the allegations.
 27
 28

1 4.51 Defendant denies the allegations of this paragraph.

2 4.52 Defendant denies the allegations of the paragraph.

3 4.53 Defendant admits that plaintiff wrote a document about his performance. Except as so
4 admitted, defendant denies the allegations of the paragraph.
5

6 4.54 Defendant denies the allegations of the paragraph.

7 4.55 Defendant denies the allegations of the paragraph.

8 4.56 Defendant admits that on October 15, 2019, Ms. Holguin informed plaintiff that he was
9 being proposed for removal on the following five charges: (1) misuse of government property, (2)
10 misuse of government time, (3) misrepresentation of time and attendance, (4) theft, and (5) lack of
11 candor. Except as so admitted, defendant denies any remaining allegations in the paragraph.
12

13 4.57 Defendant admits that Ms. Dillon sent an email saying that she was “strategically” sending
14 plaintiff’s disciplinary action out prior to other disciplinary actions she was working on for the line
15 of business, and that, as she testified at the MSPB hearing, she needed to send out the discipline that
16 was subject to appeal rights under the union contract prior to lower level discipline that did not carry
17 appeal rights and did not have to be completed under the same time constraints. Except as so
18 admitted, defendant denies the allegations of the paragraph.
19
20

21 4.58 Defendant admits that on or around October 30, 2019, plaintiff provided a response to the
22 proposal for removal and that his response referenced anxiety. Except as so admitted, defendant denies
23 the allegations of the paragraph.

24 4.59 Defendant admits that plaintiff claimed that the investigation was initiated from Ms.
25 Perez’s statements. Except as so admitted, defendant denies the allegations of the paragraph.
26
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1 4.60 Defendant admits that it did not issue a letter of expectation to plaintiff prior to his
 2 proposed removal, but to the extent Plaintiff is suggesting one was required, this is denied. Except
 3 as so admitted, defendant denies the allegations of the paragraph.
 4

5 4.61 Defendant admits that on December 5, 2019, Ms. Holguin sent plaintiff a decision
 6 sustaining his removal. Except as so admitted, defendant denies the allegations of the paragraph.

7 4.62 Defendant denies the allegations of the paragraph.

8 4.63 Defendant admits the first sentence of the paragraph and admits that before the MSPB
 9 plaintiff asserted affirmative defenses to his removal that were not sustained. Except as so admitted,
 10 defendant denies the allegations of the paragraph.
 11

12 4.64 Defendant lacks information sufficient to form a belief as to the truth or falsity of the
 13 allegations regarding when plaintiff received the MSPB decision and therefore denies the same.
 14 Defendant admits that the MSPB issued a decision dated September 29, 2020 affirming the FAA's
 15 decision to remove plaintiff and that the decision was sent electronically the same day. Except as so
 16 admitted, defendant denies the allegations of the paragraph.
 17

18 4.65 Defendant admits the allegations of the paragraph.
 19

20 **V. CAUSES OF ACTION**

21 5.1 Defendant incorporates and re-alleges its responses to paragraphs 1.1 through 4.26 as if
 22 fully set forth herein.

23 5.2 Defendant denies the allegations of the paragraph.

24 5.3 Defendant denies the allegations of the paragraph.
 25

26 5.4 Defendant incorporates and re-alleges its responses to paragraphs 1.1 through 5.5 as if fully
 27 set forth herein.
 28

1 5.5 This allegation states a legal conclusion to which no answer is required. To the extent an
2 answer is deemed required, defendant denies the allegations.

3 5.6 This allegation states a legal conclusion to which no answer is required. To the extent an
4 answer is deemed required, defendant denies the allegations.
5

6 5.7 Defendant denies the allegations of this paragraph.
7

8 5.8 Defendant denies the allegations of the paragraph.
9

10 6.1-6.9 Answering plaintiff's prayer for relief, defendant denies that plaintiff is entitled to any relief.

11 **Affirmative Defenses**

12 1. Plaintiff fails to state a claim against defendant upon which relief can be granted.

13 2. All actions taken by defendant with respect to plaintiff were based upon legitimate, non-
14 retaliatory and non-discriminatory reasons.

15 3. Some or all of plaintiff's claims may be barred by the applicable statute of limitations.

16 4. Plaintiff failed to exhaust his administrative remedies with respect to some or all of his
17 claims.
18

19 5. Plaintiff failed to exhaust his administrative remedies in a timely fashion as to some or all of
20 his claims.

21 6. Defendant had a legitimate business reason for every action taken regarding plaintiff,
22 including but not limited to the actions admitted herein.
23

24 7. Defendant's actions, about which plaintiff now complains, were taken in a fair, reasonable,
25 and lawful manner under the circumstances then existing.
26
27
28

1 8. Defendant's actions, about which plaintiff now complains, were a just and proper exercise of
2 management discretion, undertaken for fair and honest reasons in good faith under the circumstances
3 then existing.

4
5 9. Defendant had legitimate, non-retaliatory and non-discriminatory reasons for taking the
6 actions that are the subject of the instant complaint that were not pretextual. Even if retaliation or
7 discrimination played any role in any action taken, defendant would have taken the same action
8 regardless.

9
10 10. There is no basis for imputing liability to the defendant.

11 11. Plaintiff has no damages. To the extent damages exist, plaintiff failed to mitigate damages.

12 12. Plaintiff failed to timely complain about any alleged harassment. Defendant took prompt,
13 effective remedial action to end any alleged harassment, even if it occurred.

14
15 13. Defendant reserves the right to amend this Answer to state additional defenses, and to delete
16 or withdraw defenses, as may become apparent during the course of discovery.

17 DATED this 22nd day of February, 2021.

18
19 Respectfully submitted,

20 BRIAN T. MORAN
21 United States Attorney

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27
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s/ Sarah K. Morehead

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